

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed September 15, 2004 and Supplemental Office Action mailed November 9, 2004. At the time of the Office Action, Claims 1-31 were pending in this Application. Claims 1-31 were rejected. Claims 1-10 and 19-31 have been amended to further define various features of Applicants' invention. Claims 11-18 have been canceled due to the new fee schedule. Claims 32-43 have been added. Applicants respectfully request reconsideration and favorable action in this case.

Interview Summary

Pursuant to a telephone interview with Examiner on October 21, 2004, Applicants acknowledge and appreciate receiving the Supplemental Office Action mailed November 9, 2004 providing a corrected PTO-892 correcting an administrative error in cited references.

Double Patenting Rejection

The Examiner rejected Claims 1-6, 11-15, 22-25 and 27 based on the judicially created double patenting doctrine over Claims 1-6 of U.S. Patent No. 6,722,185 (hereinafter "the '185 Patent"). Applicants respectfully traverse the rejection. However, to reduce the cost and time required to obtain patent protection, a Terminal Disclaimer filed in compliance with 37 C.F.R. 1.32(b) is attached hereto. The '185 Patent and the instant patent application are commonly owned by FEDD Systems, Inc.

Rejections under 35 U.S.C. §103

Claims 1-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yoneda et al. in view of Lamensdorf. Applicant respectfully traverses and submits a *prima facie* case of obviousness has not been established because the combination of Yoneda and Lamensdorf does not yield the presently claimed invention of the amended claims. For example, in order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining

Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Here, none of the basic criteria are met, especially the third criteria.

The Examiner notes that Yoneda "fails to disclose using a battery powered RF transmitter in the plant in communications [*sic*] to the detector to transmit ID coded signal[s] relative to the ID code, the detector, and the battery to a central processing location." The Examiner then concludes, improperly using the teachings of the present application as a template, that "it would have been obvious to one skilled in the art ... to [use] a wireless system to communicate a detector signal to a central processing system because such a concept is old in the art as taught in Lamensdorf ... Further, wireless communication would reduce the tedious wiring in the system which result[s] in lower cost[s]." Applicants respectfully disagree.

Yoneda is directed to a "Method for the Combustion Treatment of Toxic Gas-Containing Waste Gas." In Column 21 (cited by the Examiner) referring to Figure 11, Yoneda discloses the use of hard-wired pressure, gas, flame, and temperature sensors (101, 102, 103, 104) all hard-wired to a "central unit 100." These sensors are electrically connected to the control unit 100 so that the control unit can open the valve 77 while closing the valve 78 based on the signal from any of the sensors." (Col. 21, lines 19-22). Yoneda also discloses level sensor 105 and pressure sensor 108. (Col. 21, lines 23-34). Level sensor 105 "is provided in the lower portion of the apparatus 73 for activating a level controller 107 capable of adjusting the value 106 in the pipe 89 whereby the level of water in the apparatus can be maintained constant." (Col. 21, lines 23-27). Thus, level sensor 105 is not in communication with control unit 100. Pressure sensor 108 is "connected to ... control unit 100 for activating the control valve 109 for the pipe 109' to control the volume of air to be

sucked therethrough whereby the inner pressure of the furnace can be maintained at a predetermined value.” (Col. 21, lines 27-33). Consequently, Yoneda discloses a system wherein hard-wired sensors are employed, the sensors are hard-wired to either a “control unit 100” or a “level controller 107” to open and control valves based on sensor signals.

Lamensdorf discloses that “[r]emote portable ‘attendants’ that take the place of a human safety monitor are carried by persons at the remote locations.” (Abstract) (emphasis added) And Lamensdorf makes clear the units disclosed are “portable”, *e.g.*: “Each remote portable attendant is carried by an operator working and moving about in possibly hazardous areas and serves as a portable electronic attendant, serving most functions of a human attendant. The remote portable attendant does not become bored, distracted or out of sight of the person being monitored, as often happens with a human attendant.” (Col. 2, lines 20-27) (emphasis added) The main point of Lamensdorf is the monitoring of people, not systems. Lamensdorf’s portable unit only includes a “gas sensor” to alert an operator “carrying” the unit that a dangerous situation exists and that she should evacuate the area. For example, Lamensdorf teaches:

Where the operators comprising the portable attendants working in areas possibly having a deficiency of oxygen or possibly containing hazardous gases, the portable attendant units will include gas sensors capable of detecting the presence and level of oxygen and the hazardous gases.

(Col. 2, line 50-54) (emphasis added) Thus, the “sensors” of Lamensdorf are included in the “portable units” and thus, are portable or transient themselves, *i.e.*, the Lamensdorf sensors are “not fixed” at a location in the plant but, move around with the person carrying them to alert the person to dangerous conditions. Indeed, Lamensdorf criticizes prior art systems utilizing “fixed” location sensors:

While these [known] systems are effective in fixed locations, such as rooms in a building, they are not portable or adaptable to changing conditions. They are not capable of sensing hazardous conditions involving persons moving from location to location.

(Col. 1, lines 38-41) Consequently, the first criteria to establish *prima facie* obviousness has not been met, *i.e.*, there is no motivation to combine the Lamensdorf “portable unit” somehow with Yoneda’s fixed sensors. Indeed, Lamensdorf specifically states it is not

applicable to prior art systems having hard-wired sensors at fixed locations. (*See* Background section of Lamensdorf -- Col. 1, lines 17-43.) Thus, Lamensdorf actually teaches away from the combination of its portable, non-fixed units with known fixed sensor systems, like Yoneda. Thus, Applicants request withdrawal of the obviousness rejection.

Second, the combination of Yoneda and Lamensdorf, even if proper which Applicants do not concede, would not lead one of ordinary skill in the art to the presently claimed invention. Independent Claim 1 has been amended to make clear the invention is directed to battery powered detectors and transmitters located at "fixed" locations in the plant, *i.e.*, the detectors and transmitters are not being carried around by operators in portable units throughout the plant. In addition, Independent Claim 1 remains directed to a transmitter capable of transmitting a signal relative to an identification code, the detector, and the battery. In contrast, the combination of Yoneda and Lamensdorf does not teach or suggest all the claimed limitations of Claim 1, especially transmitters located at fixed positions in the plant. For example, even though Lamensdorf states it is not applicable to, but replaces systems having detectors at "fixed locations" (Col. 1, lines 38-40), the application of Lamensdorf's mobile transmitter units to Yoneda's system would not yield the invention. The combination would yield a system wherein an operator would walk around and check the status of Yoneda's "fixed sensors" and report that the process is operating correctly or within acceptable parameters. Consequently, according to this improper art combination, a worker carrying the portable units would move from one area to the next and report that the values of control units of Yoneda are properly functioning. Of course, after the operator leaves an area she would not know whether the previously observed area is still operating correctly. The Yoneda/Lamensdorf operator would be alerted to possible dangerous atmospheric gas conditions while moving about the plant. However, once a sensor senses a particular gas, it might be too late for the operator carrying the unit -- she may have already inhaled the dangerous gas and become sick or immediately die while the sensor sounds an alarm. The combination of Yoneda and Lamensdorf simply does not provide for a system comprising battery powered transmitters and detectors wherein those transmitters and detectors are located at fixed locations in the plant and thus, eliminate the necessity for an operator, like the operators in Lamensdorf. Moreover, since the battery-powered detectors and transmitters

are located at a fixed location in the plant, there is no need to send an operator or person into a potentially dangerous area to check the detectors. However, if it is necessary to send an operator to a location, she knows before arriving she is not walking into an unsafe area, *i.e.*, she is not carrying Lamensdorf's sensor on her body, but is able to check the status of the area prior to arriving in the area. And, as mentioned, the presently claimed system eliminates the need to send a person into an area to observe, etc. And, of course, neither Lamensdorf nor Yoneda teach or suggest the use of battery-powered detectors and transmitters at fixed locations -- only Lamensdorf teaches transmitters and they are non-fixed, *i.e.*, mobile transmitters carried by people, not in electrical communication with detectors at fixed locations in a plant. Consequently, even if the combination of Yoneda and Lamensdorf is made, the presently claimed invention is not the result. Therefore, Applicants respectfully submit that a *prima facie* case of obviousness has not been established for a second reason, *i.e.*, because the combination of Yoneda and Lamensdorf does not teach all of the limitations of the amended claims and the new claims. Claims 2-10 and 19-31 are dependent on Claim 1 and thus, the above remarks apply equally to Claims 2-10 and 19-31. Therefore, the Applicant respectfully requests favorable action, *i.e.*, reconsideration of amended Claims 1-10, 19-31, and new dependent Claim 32, dependant on Claim 1. In addition, Applicants request favorable action in relation to new Claims 33-43 directed to a fixed battery-powered detector/transmitter system.

CONCLUSION

Applicants have now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of Claims 1-31 as amended, new dependent Claims 32, and new Claims 33-43.

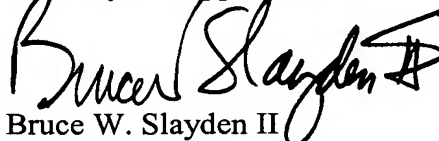
Applicants enclose a check in the amount of \$65.00 for the Terminal Disclaimer filing fee.

Applicants enclose a Fee Transmittal and check in the amount of \$100.00 for the four (4) additional claims added (over 31 claims previously paid for) and believe there are no other fees due at this time.

Applicants believe there are no additional fees due, however, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2606.

Respectfully submitted,
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Attachment(s)

1. Terminal Disclaimer, along with a check in the amount of \$130.00